

IN THE
Supreme Court of the United States

OCTOBER TERM, 1991

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION,
MINNESOTA PUBLIC UTILITIES COMMISSION,
and PEOPLES NATURAL GAS COMPANY, a
division of UtiliCorp United Inc.,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

**RESPONSE OF PRODUCER INTERVENORS TO
MOTION FOR LEAVE TO FILE *AMICI* BRIEF**

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Producer Intervenors would bring to the Court's attention three facts material to the Motion of the National Association of Regulatory Utility Commissioners, *et al.* ("NARUC"), for Leave to File Brief as *Amici*.

First, Rule 37.2 of the Supreme Court Rules provides that an *amicus* must seek the written consent of all parties below prior to filing. NARUC states in its brief that the number of parties "has precluded amici from obtaining consent from all Respondents." Motion at 2. Although Producer Intervenors participated in the Court of Appeals through the filing of a joint brief, NARUC did not attempt to secure the consent of the undersigned

counsel, who represented the producers collectively.¹ In fact, undersigned counsel has been unable to identify a single producer contacted by NARUC for consent to file an *amicus* brief.²

Second, NARUC has not been significantly involved in the proceedings below or in prior proceedings that were predicated upon the same legal issues. NARUC did not participate in the Order No. 23 rulemaking, the judicial review of Order No. 23, or the administrative proceedings in this case. NARUC first expressed an interest in this matter through the filing of a motion for leave to file an *amicus* brief in support of the suggestion of rehearing at the Court of Appeals, which request was denied.

Finally, NARUC simply parrots the claims and arguments of Petitioners. Because NARUC brings no new perspective to the issues at bar, the Court should deny the request for leave to file as *amici*.

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AND ON BEHALF OF

¹ Producers filed a joint response in opposition to NARUC's motion for leave to file as *amicus curiae* in the Court of Appeals.

² Supreme Court Rule 37.2 provides that a motion for leave to file a brief *amicus curiae* when consent has been refused is not favored.

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